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1 TOWN OF EAST HAMPTON: STATE OF NEW YORK
JUSTICE COURT

2 -----x
3 THE PEOPLE OF THE STATE OF NEW YORK,

4 DOCKET NO:14010313

5
6 -against-

7
8 CUTHBERT, WILLIAM,

9 DEFENDANT.

10 -----x
Justice Court
11 159 Pantigo Road
East Hampton, NY
12 October 14, 2014
9:30 a.m.

13 B e f o r e:

14 STEVEN TEKULSKY, Town Justice

15 A p p e a r a n c e s:
THOMAS J. SPOTA
16 SUFFOLK COUNTY DISTRICT ATTORNEY
North County Complex - Building 77
17 Veterans Memorial Highway
Hauppauge, New York 11778
18 BY: SEAN MCDONNELL
Assistant District Attorney
19 For the People

20 JOSEPH GIANINNI, ESQ
P.O. BOX 1958
21 AMAGANSETT, NY, 11930-1958

22
23 * JURY TRIAL *

24 Gloria Rosante,
Court Reporter

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15 O F F I C E R F R A N K T R O T T A, a witness called
16 on behalf of the People, was duly sworn by the Court and
17 testified as follows:

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THE COURT: Mr. MacDonnell are the
People ready to proceed with the
presentation of evidence.

MR. MACDONNELL: People are ready,
Your Honor.

THE COURT: Call your first
witness.

MR. MACDONNELL: Your Honor, at
this time the People call Officer
Frank Trotta of the East Hampton
Police Department.

THE COURT: Officer Trotta, please
raise your right-hand.

THE COURT: All right. Be seated
and in a loud, clear voice please
state your full name and your shield
number.

A Officer Frank Trotta. East
Hampton Town Police, shield number 195.

THE COURT: All right, Mr.
MacDonnell.

1 MR. MACDONNELL: Thank you, Your
2 Honor.

3 EXAMINATION

4 BY MR. MACDONNELL:

5 Q Good afternoon, Officer?

6 A Good afternoon.

7 THE COURT: Please try to speak
8 into the microphone and keep your
9 voice up.

10 Q By whom are you currently
11 employed?

12 A East Hampton Town Police
13 Department.

14 Q And for how long have you been
15 so employed?

16 A Just a little over nine years.

17 Q Were you a police officer
18 anywhere prior to becoming one in East
19 Hampton?

20 A I was NYPD.

21 Q For how long were you with the
22 NYPD?

23 A Just a little over eight years.

24 Q Could you please describe for
25 the jury what your general duties are as a

1 police officer?

2 A Just basic patrol duties.

3 Sometimes emergency response.

4 Q Could you please describe the
5 training you completed prior to becoming a
6 police officer?

7 A I went to NYPD Police Academy
8 in 1997 and came over here and received
9 training that they give here in the East
10 Hampton Police Department.

11 Q Did you receive training
12 specifically regarding defensive tactics?

13 A Yes. Every year we are
14 recertified.

15 Q Could you please explain the
16 training you receive every year regarding
17 defensive tactics and what a defensive
18 tactic is for the jury?

19 A It's a taught level of
20 restraint to combat a certain level of
21 resistance.

22 Q And you are recertified or
23 retrained in this how often?

24 A Every year.

25 Q Now I would like to draw your

1 attention to January 23, 2014. Were you
2 working on that day?

3 A I was.

4 Q What tour was it?

5 A I was the day shift so 7 to 3.

6 Q Seven am to three p.m. ?

7 A 7:15 a.m. to 3:15 p.m.

8 Q Were you driving a marked
9 vehicle that day?

10 A I was.

11 Q Were you in your regular marked
12 patrol vehicle?

13 A I was not.

14 Q Why weren't you in your regular
15 vehicle?

16 A With the excessive snow
17 conditions and the icy roads they
18 recommended we use four wheel drive vehicles
19 what are most likely the marine patrol four
20 wheel drive truck.

21 Q What was the vehicle that you
22 were driving that day?

23 A It was a small Ford Ranger.

24 Q Do you recall what the weather
25 conditions were on January 23rd?

4WD

1 A It was sunny. A little over a
2 certain degree, maybe like eighteen to
3 twenty degrees, and there was a lot of snow.

4 Q Were you in uniform that day?

5 A I was.

6 Q Were you alone or with a
7 partner?

8 A I was alone.

9 Q What if anything happed that
10 day at 10:26 am on the date?

11 A I was dispatched to a minor car
12 accident Acabonac Road and Abrahams path.

13 Q Are both those roads in the
14 Town of East Hampton, County of Suffolk,
15 State of New York?

16 A Yes.

17 Q What if anything happened when
18 you were dispatched to that scene?

19 A I responded to the call and I
20 started heading in that direction. I was
21 probably like two miles away. I was coming
22 from the south after 27 up towards Abrahams
23 Path where the accident occurred.

24 Q What if anything did you
25 observe as you approached that intersection?

1 A I came up to a line of traffic.
2 Probably five or six cars, maybe at the
3 most. I can't recall how many but there was
4 a few and there was a delivery truck.
5 Biggest one on the line, and I couldn't see
6 any oncoming traffic so I put on the
7 emergency lights and proceeded in oncoming
8 traffic to see if I could get close enough
9 to the accident.

10 Q You as you drove into oncoming
11 traffic did you observe anything else as you
12 approached the intersection?

13 A There was an individual
14 standing there talking, ands you know, in a
15 high tone to the driver of the fuel truck
16 that was parked right behind the vehicle
17 that was hit.

18 Q Do you see that individual that
19 was in the road having a discussion with the
20 driver of the fuel truck in the courtroom
21 today?

22 A I do and he is sitting right
23 over there.

24 MR. MACDONNELL: Your Honor, let
25 the record reflect that the witness

lights

high
tone

1 identified the Defendant.

2 THE COURT: Yes the record should
3 reflect that Officer Trotta has
4 identified the Defendant.

5 Q Officer Trotta, can you please
6 describe what the accident scene itself
7 looked like when you saw it?

8 A It wasn't that bad. There were
9 five lanes of cars behind it and I came
10 along side and there was a car slightly into ?
11 a van. It wasn't really anything where I
12 could say major. I mean just a small minor
13 accident.

14 Q What if anything did you do
15 after you drove into the oncoming traffic
16 and drove up to where the Defendant was in
17 the road?

18 A I pulled up next to him and,
19 again I was in a marine patrol vehicle, and
20 rolled down the window and leaned over and
21 said, "sir, could you move your vehicle out
22 of the roadway so it doesn't get hit again."
23 The intersection was extremely icy that
24 morning so, he turned to me and said, "I am
25 waiting for the fucking cops." And I said,

minor
accident

BS

1 "well, I am the police I am just in another
2 vehicle if you could just move it. He
3 turned around to the driver of the fuel
4 truck and said, "Do you have a fucking
5 problem too?" And I said, "Sir, just move
6 your vehicle to the side of the road and let
7 these people pass they have nothing to do
8 with this. I then proceeded away. I cant
9 go any faster than two miles per hour and in
10 a fit of rage he elbows the passenger side
11 mirror of the truck screaming, "You fucking
12 hit me, you asshole, now you are running
13 people over, what is your problem?"

14 Q And after he struck the side of
15 your vehicle what did you then do?

16 A I then leaned out the door, and
17 looked at the driver of the delivery truck
18 and said, "You can't go anywhere I need your
19 name." And he is like (that guy you didn't
20 even hit him, he elbowed your mirror, you
21 weren't even close to him.) I said, okay but
22 you can't anywhere I need your name. He
23 stuck around and the other Officer took it
24 down.

25 Q Were you able to ascertain the

1 name of that driver?

2 A I was, Jerry Brockwell.

3 Q After this happened what did
4 you do next?

5 A The driver then proceeded to
6 the van and moved it out of the way and I
7 came up behind him. I called for assistance
8 for an irate motorist to have another unit
9 respond. I then got out of the truck and
10 now we are on the bend of the golf course
11 facing north on Acabonac Road. Abrahams
12 Path is now behind us. I got out of the car
13 and so does he, and here he comes.

14 Q When you say, "Here he comes,"
15 what do you mean by that?

16 A He is not happy.

17 Q Was he saying anything to you?

BS 18 A He was screaming at me, "You
19 fucking pig, you big fucking asshole, get
20 another cop here," and I was like, you need
21 to calm down it was only an accident, this
22 will be done in five minutes. I'll take
23 care of it. No it was, "Fuck you, I am not
24 listening to you, get the fuck away, I want
25 somebody else." At that time he turned to

1 me and was like, "Fucking get somebody
2 else." And he was coming, eh was extremely
3 close. I grabbed one arm and I pushed him
4 back to the van and said you are under
5 arrest for disorderly conduct.

Van

6 Q I want to stop you right there.
7 Why did you push him back at that point?

8 A He turned and said, "I told you
9 get another fucking cop," and he was coming
10 at me so I push him away.

11 Q After you pushed him away what
12 did he do?

13 A He came off the van and I
14 grabbed his left arm and I pushed him back
15 again and said he was under arrest for
16 disorderly conduct. I put one cuff on and
17 he pushed off the van and began flailing.
18 At this time I spun him around and ended up
19 on the hood of the Ford Ranger.

Ranger

20 THE COURT: Was that the vehicle
21 you responded in, the Ford Ranger?

22 A That was the vehicle from
23 Marine Patrol, my vehicle yes.

24 Q So you know have him with his
25 chest and face on the hood of your vehicle?

1 A Yes.

2 Q And how many hands were
3 handcuffed at this point?

4 A One. Only the left at this
5 point.

6 Q What was he doing while you
7 were attempting to place the other hand in
8 the handcuffs?

9 A He was screaming, "You fucking
10 pig, get the fuck off me, leave me the fuck
11 alone," and I was able hold him down and to
12 grab his right arm and lock it in.

13 Q Was he doing anything with his
14 arms as you were trying to put the other
15 handcuff on?

16 A He was combative and wouldn't
17 let me put the other handcuff on.

18 Q After you had the second
19 handcuff on what if anything happened at
20 that time?

21 A The second one went on and I
22 held him down and said, "You really need to
23 calm down." And then Officer Johnson pulled
24 up and started to come around the corner and
25 he approached from the right and shortly,

hand
cuffed

1 not even then seconds after I got the
2 handcuff on he started yelling and
3 screaming, "Get the fuck off of me, you
4 fucking asshole, you pigs, I am going to
5 have your job."

6 Q And when Officer Johnson
7 arrived what if anything did you do at the
8 point?

9 A Officer Johnson asked me what
10 was happening and I said I don't know he
11 won't stop and I am holding him down and he
12 is in cuffs and Officer Johnson and I held
13 him down by his shoulders and told him to
14 calm down and that he was under arrest. He
15 said, "Fuck you, I am not listening to you,
16 fuck you guys, I hope your family gets
17 cancer and dies." It just kept coming out
18 at this point.

19 Q Did he calm down at all this
20 point?

21 A He didn't and he was still
22 flailing on the hood of the car and at that
23 point Officer Johnson being the Defensive
24 Tactics Instructor turned to me and said,
25 "You know for our safety and he doesn't get

BS

Safety

1 injured and for our safety so we don't get
2 injured, hes' doing down to the ground to
3 stop him from bouncing on the hood of the
4 car." And that is what we did.

5 Q So you placed him on the
6 ground. How did you place him on the
7 ground?

8 A He just went down almost on his
9 side and on his chest to hold him down to
10 stop him from all the other stuff.

11 Q When you placed him on the
12 ground did any other Officer's show up at
13 this point?

14 A Officer Rantinella showed up a
15 couple minuted after that and we were
16 holding him and restraining him, and on
17 numerous occasions telling him to calm down,
18 and you have got to relax and he just didn't
19 want to hear any of it.

20 Q As you were telling him to calm
21 down and relax, what was he doing?

22 A He just kept flailing and we
23 actually turned him over and sat him up.

24 Q Why did you sit him up?

25 A It's an uncomfortable position

1 to be on your chest so we turned him over
2 and sat him upright and he sat with his legs
3 out.

4 Q Officer, I know you said it was
5 cold that day what uniform were you wearing?

6 A I was wearing my regular police
7 uniform. Just turtleneck and long sleeve.
8 I don't usually wear a jacket. I don't
9 really wear it unless it's really needed.

10 Q Did you need a jacket at any
11 point during this day?

12 A I did, it was cold out there.
13 At one point Officer Johnson was over the
14 top of the driver and he had his knee out so
15 the driver wouldn't flail backwards and fall
16 into the snow and he stood there and I went
17 back and retrieved Officer Johnson's jacket
18 as well as mine. Officer Rantinella put his
19 jacket on it was -- yes it was cold.

20 Q And at any point did anybody
21 offer the Defendant a jacket to wear?

22 A There was a female that came
23 over with a jacket of the driver and we
24 tried to put it on him but, "Fuck you, I
25 don't want it."

Jana?

1 Q What was his response to the
2 offer of the jacket?

3 A "Fuck you, I don't want it, get
4 it off me, don't touch me."

5 Q How did you attempt to put the
6 jacket on him?

7 A We just draped it over the top
8 of him to try and keep him warm because his
9 hands were in cuffs and there was no way to
10 put the jacket on.

11 Q Did there come a time when you
12 attempted to transport him back to
13 headquarters?

14 A I did, unfortunately at this
15 time, because of the snow and the heavy
16 weather conditions we were all driving
17 4-wheel drive vehicles and due to policy we
18 don't put people in handcuffs right next to
19 me in the pickup truck so one of the
20 officers had to go back to headquarters and
21 pick up a police car and slowly make his way
22 back to Acabonac.

23 Q Can you describe the truck you
24 were driving -- it was only?

25 A It's only two seats. A little

1 extension. It's a small Ford Ranger. No
2 bigger than a small mini pickup truck. I
3 had the old lights on top, the old noise
4 makers.

5 Q Is there anyplace to place the
6 Defendant in the vehicle?

7 A No, the back is loaded with
8 emergency gear and the passenger seat had my
9 duty bag and me.

10 Q Who arrived in the transport
11 vehicle that day?

12 A Officer Thomas Strong.

13 Q And do you recall the vehicle
14 or the type of vehicle he arrived in?

15 A He was in the an old Crown
16 Victoria marked unit.

17 Q Is there any partition from the
18 front seat and the back seat?

19 A There is a window.

20 Q Were you able to place this
21 Defendant in the rear of that vehicle?

22 A We were.

23 Q Did you have any difficulties
24 in placing him in the back of the vehicle?

25 A We did.

1 Q Could you please describe for
2 the jury the issues you had in getting him
3 in the vehicle?

4 A We asked him -- when the
5 vehicle arrived, one person would open the
6 back door, two of us would have lifted him
7 up and he went limp. "This is bullshit," we
8 dragged him to the car and we got him in the
9 car and laid him face down, across the
10 backseat. He is a rather big guy and it
11 took a bit to get him in. We got him in
12 faced in, all the way to the passenger door
13 their and we attempted to close the door by
14 bending his legs and once doors closed we
15 heard tapping on the window. Bump, bump.

16 Q Based on hearing the tapping on
17 the window what if anything did you do?

18 A The tapping on the window, we
19 were concerned the window would break or he
20 would kick a window out so we moved his legs
21 up and put a leg restraint around his ankles
22 which clips onto his handcuffs so you can't
23 tap on the motor vehicle.

24 Q Did you then get into the car
25 with Officer Strong to transport the

hog
head

1 Defendant back to the precinct?

2 A I did not. I actually followed
3 him back while he transported.

4 Q Did you meet the vehicle at
5 headquarters in Wainscott?

6 A I did.

7 Q What was the Defendant's
8 demeanor when you got back to headquarters
9 with the Defendant?

10 A It was the same way. A lot of
11 ranting and raving. I wasn't that close but
12 you know, when the Officer came around I
13 opened the door and we had to pull him out
14 again. And then from that point on I don't
15 know when he went of cell.

16 Q And Officer, what did you
17 subsequently arrest the Defendant for on
18 January 23?

19 A I arrested him for disorderly
20 conduct. I arrested him for resisting
21 arrest and I arrested him for the
22 harassment.

23 Q And what was the basis for the
24 harassment charge against yourself?

25 A At some point at the time when

1 I was going to put handcuffs on him while he
2 was flailing and Officer Johnson noticed
3 that after we subdued him there was blood
4 running down my hand. I don't know where it
5 came from it was probably at the struggle.

6 Q What was the basis for the
7 disorderly conduct charge?

8 A The assessment at the scene
9 with the profanity and screaming, yelling.

10 Q While dealing with the
11 Defendant back at headquarters did you have
12 an opportunity to learn the name of the
13 Defendant?

14 A Yes.

15 Q And how did you come to learn
16 the name of the Defendant?

17 A Through his New York State
18 drivers license.

19 Q What was the name that you were
20 able to determine from the drivers license?

21 A William Cuthbert.

22 Q Thank you Officer?

23 MR. MACDONNELL: Your Honor, no
24 further questions at this time.

25 THE COURT: All right. Mr.

DISCON

1 Gianinni.

2 CROSS EXAMINATION

3 BY MR. GIANNINI:

4 Q Officer Trotta, can you hear
5 me?

6 A I can.

7 Q You testified on direct
8 examination that you got a call from
9 dispatch, right?

10 A Yes.

11 Q And do you recall what time you
12 got that call?

13 A I want to say right around
14 10:30, 10:35. I am not really sure exactly
15 when. I just knew I had to go.

16 Q Was this as a result, if you
17 know, as a result of a 911 call to dispatch?

18 A I would assume. I don't know
19 how else it would come through my radio.

20 Q When you say, you assume, at
21 this point you don't know?

22 A No, I don't know.

23 Q You don't know?

24 A No.

25 Q And are you saying that you

1 never found out that was it was his
2 girlfriend Jana Bennett?

3 MR. MACDONNELL: Objection.

4 Q Did you ever find out that it
5 was his girlfriend that made the 911 call?

6 A No. I never found that out?

7 Q Now you said that there was
8 excessive snow?

9 A There was a lot of snow.

10 Q It was bitter cold?

11 A It was.

12 Q You said it was like seven,
13 eight or nine degrees?

14 A I would say it was a little
15 more than that, but it was cole.

16 THE COURT: He actually said it
17 was seventeen or eighteen degrees.

18 Eighteen to twenty.

19 Q You were responding to an
20 accident at the intersection of Abrahams
21 Path and Acabonac Way?

22 A Acabonac Road, yes.

23 Q Acabonac Road. Were you by
24 yourself?

25 A I was at the time, yes.

1 Q And you said on direct
2 examination that you were approached on
3 Abrahams Path towards Acabonac Road?

4 A Yes.

5 Q And there was some vehicles --
6 there were some vehicles at the
7 intersection?

8 A Yes.

9 Q There was a white van at the
10 stop sign?

11 A Yes.

12 Q That was Mr. Colberts,
13 Colberts, Cuthberts van right?

14 A At the time I couldn't assume
15 that until I got up close.

16 Q You did find out that was his
17 van?

18 A Later on, yes.

19 Q Behind that van there was an
20 automobile right?

21 A There was a delivery truck.

22 Q There wasn't a car behind it?

23 A I can't recall that. Not that
24 I know.

25 Q When you say, "You can't

1 recall," is that your opinion?

2 A Yes, my opinion at the time.

3 Q So you saw a delivery truck you
4 are saying behind the white van?

5 A Right.

6 Q Did you have an conversation
7 with the person driving the delivery truck
8 before you spoke to Mr. Cuthbert?

9 A No.

10 Q Did you know the driver of the
11 truck?

12 A I did not.

13 Q Now you said that you told Mr.
14 Cuthbert to move his van, right?

15 A Right.

16 Q You were in your vehicle when
17 you told him?

18 A I was, right next to him.

19 Q You were on the drivers side?

20 A Right.

21 Q So did you roll down the window
22 and told him to move van.

23 A I did.

24 Q So you weren't right next too
25 him?

1 A I was to right next tor him.

2 Q Officer, you are driving.

3 A Oh, okay. Yes.

4 Q He was on the passenger side?

5 A I was three feet away there was
6 nobody in the passenger side seat.

7 Q He was on the passenger side of
8 your car.

9 A He was.

10 Q And he was in the street?

11 A He was.

12 Q And you said that came a time
13 when he was walking back to his white van to
14 move it?

15 A Right.

16 Q And that you started to drive?

17 A Right, I started to move up.

18 Q And you drove right past him?

19 A I started to drive as he was
20 walking next to the vehicle, yes.

21 Q And so you were very close to
22 him?

23 A Absolutely.

24 Q And did you hear him -- did he
25 slam his left of right hand against your

1 vehicle as you were passing by?

2 A I think it was his left elbow
3 and the mirror of my truck.

4 Q You are saying that he
5 assaulted your truck?

6 A If you want to call it assault
7 or maybe elbow to the mirror absolutely.

8 Q You didn't hit him?

9 A I didn't hit him. No, sir.

10 Q You didn't hit him?

11 A I wasn't out of the car yet.

12 THE COURT: One at a time guys.

13 Next question.

14 Q Now after he supposedly hit
15 your vehicle did he get in his vehicle?

16 A He did.

17 Q And did he drive it around
18 Acabonac Road like you told him to do?

19 A He did.

20 Q Did he park it?

21 A He did.

22 Q So he was actually, at the
23 point, compliant with your commands?

24 A At that point.

25 Q Yes?

1 A At that point, yes.

2 Q And at that point did he curse
3 at you at all?

4 A Yes, numerous times.

5 Q Excuse me?

6 A Numerous times already.

7 Q But he did move his vehicle?

8 A But he did move his vehicle.

9 Q So he obeyed you?

10 A He obeyed, yes.

11 Q And after he moved the van over
12 to Acabonac Way where were you parked?

13 Right in front of him or behind?

14 A Right behind him to deter
15 traffic.

16 Q Did you pull in first and he
17 went around you or you pulled in first and
18 --

19 A I can't -- I can't -- We just
20 ended up behind each other.

21 Q You don't remember to pulling
22 in first?

23 A No, I don't remember that. I
24 can't recall that. I just know we ended up
25 with his van was in front of my truck.

1 Q Did there come a time when he
2 came out of the van?

3 A Yes.

4 Q How far away from him were you
5 at the time?

6 A In the car or personally?

7 Q Well you were sitting in your
8 car how far away.

9 A Probably like three or four
10 feet. Yes, I am in the car and his van is
11 about three feet.

12 Q He comes out of his van?

13 A Right.

14 Q You are parked behind him?

15 A Right.

16 Q Your sitting in your car,
17 right?

18 A Yes, right.

19 Q That can't be three feet?

20 A Oh no. It would be more than
21 that, but I exited my vehicle and he exited
22 his so we were out at the same time.

23 Q So he was maybe twenty feet
24 away at that time?

25 A I would say that is excessive.

1 It was not that far.

2 Q Fifteen feet?

3 A Okay. Yes, ten feet, if.

4 Q Did you get out of your car at
5 that time?

6 A Absolutely.

7 Q Your were driving an SUV,
8 right?

9 A I was driving a pickup truck.

10 Q That's right a small pickup
11 truck. And you started walking towards him?

12 A I did.

13 Q And he was walking towards you?

14 A Yes.

15 Q And did he say to you, "Do you
16 realize that you hit me?"

17 A No.

18 Q He never said that?

19 A No, he said "Fuck you, you

✓ 20 fucking pig, get somebody else here, I am
21 not talking to you."

22 Q When he said that to you, "Get
23 somebody else here," what did you think that
24 he meant?

25 A He kept saying, "Get another

1 Officer here, I'm not fucking talking to
2 you." There was one already on the way.

3 Q Did you think he wanted a
4 superior Officer like a Sargent when he said
5 that?

6 A No, he asked for somebody else
7 besides me. He didn't rectify that.

8 Q Now you made out a police
9 report regarding to this case, right?

10 A I did.

11 Q One of those reports is called
12 the narrative, right?

13 A Right.

14 Q Did you bring that with you
15 today?

16 A I did but I don't have it with
17 me.

18 MR. MACDONNELL: Judge, may I
19 approach the witness with a copy of
20 his narrative.

21 THE COURT: You may.

22 (Wherein the Prosecutor handed the
23 Narrative to the Officer.)

24 Q All right. For the record we
25 will have that marked as Defense Exhibit A

EXHIBIT A

1 for identification?

2 (The above-referred to Narrative
3 was marked as Defendant's Exhibit A
4 for identification, as of this date.)

5 Q Is that a fair and accurate
6 copy of the narrative marked as Defendant's
7 Exhibit A for identification.

8 THE COURT: For identification
9 only at this point. We don't know
10 what it says and we may never know but
11 it is marked for identification.

12 Q Officer Trotta?

13 A Yes, sir.

14 Q Is that the narrative we have
15 been talking about?

16 A Yes, sir I believe so.

17 Q You believe so or is it?

18 A It is.

19 Q Was that narrative based on
20 your recollection of the incident, of the
21 events?

22 A Yes.

23 Q Did you sign is this document?

24 A I did.

25 Q Is it true and accurate?

1 A As accurate as I can get it,
2 yes.

3 Q Now there is a part about half
4 way down the paragraph where you relay how
5 you arrested him. It starts with -- lets
6 see -- Driver Defendant exited his vehicle
7 in a confrontational manner --

8 THE COURT: It's not in evidence
9 so.

10 MR. GIANNINI: I know.

11 THE COURT: You want to tell him
12 what line it starts with and then you
13 can ask him questions about it.

14 Q In this narrative, your
15 narrative does it say or did he --
16 withdrawn.

17 Does it say that he existed the
18 vehicle in a confrontational manner?

19 A Yes, within inches --

20 Q He got within inches of your
21 face?

22 A Yes.

23 Q And he said to you, "Fuck you,
24 fucking pig, I'm not listening to you,
25 fucking pig, get another officer here, you

1 asshole." And then you placed him under
2 arrest according to this?

3 A Yes.

4 Q So he came over to you, you are
5 saying?

6 A Right.

7 Q Got right in your face?

8 A Right.

9 Q And you placed him under
10 arrest?

11 A Yes.

12 Q For what?

13 A Disorderly conduct.

14 Q Now did a crowd assemble around
15 this incident?

16 A Just motorists I believe there
17 was.

18 Q Did he cause a public nuisance,
19 did he bother the public, was there a public
20 nuisance by him?

21 A Not that I know of, no.

22 Q Now you did an arrest report
23 too?

24 A I did.

25 Q Okay. We will have that marked

no
public
nuisance

1 A He was.

2 Q And he was a -- well lets go
3 back. You said you put him over the hood of
4 your vehicle?

5 A Yes, trying to get him
6 handcuffed.

7 Q So just so make this clear you
8 grabbed him, I think you said on direct
9 examination you grabbed his right arm first?

10 A Left first.

11 Q And then you swung him onto the
12 hood of vehicle?

13 A Yes, sir. He came around and
14 right on the hood of the truck.

15 Q And then you grabbed his?

16 A Right arm and attempted to --

17 Q At all times he was on the hood
18 of your vehicle?

19 A Yes, sir. Flailing and
20 yelling.

21 Q How much do you weigh?

22 A I weigh a hundred and fifty two
23 pounds.

24 Q Would you agree that Mr.

25 Cuthbert is bigger than you?

1 as Defendants Exhibit B.

2 THE COURT: If You have one.

3 MR. MACDONNELL: Judge I gave him
4 the entire six pages arrest report.

5 MR. GIANNINI: Lets do just page 2
6 of 6.

7 (The above-referred to Page 2 of 6
8 of the Arrest Report was marked as
9 Defendant's Exhibit B for
10 identification, as of this date.)

11 Q Just take a look at what we
12 have marked as Defendant's Exhibit B for
13 identification only. That is page two of
14 the arrest report, right?

15 A It is.

16 Q And on the page there is a
17 portion that says, "Condition of Arrest,"
18 right?

19 A Yes.

20 Q And what did you check off?

21 A Apparently normal.

22 Q And there was also, on that
23 page a place to indicate what the subject
24 was wearing, what was marked off?

25 A Black shirt and blue jeans.

1 Q And um Officer?

2 A Yes.

3 Q You said that you called for
4 assistance while at the scene?

5 A Right.

6 Q Was William Cuthbert in his
7 vehicle when you called for assistance?

8 A No, he was walking back to move
9 the van.

10 Q He was walking towards you?

11 A He was walking back to the van.

12 Prior to him elbowing the mirror I called
13 for assistance for an irate motorist?

14 Q Hold on. You mean he was
15 walking back to his van to move it?

16 A Yes.

17 Q He did move it?

18 A Yes, I called for assistance --

19 Q You called for assistance
20 before he got in his van that first time?

21 A Absolutely.

22 Q Now you said there came a time
23 that you handcuffed him?

24 A Yes.

25 Q Did you handcuff him to the

1 front?

2 A No.

3 Q Did you handcuff him to the
4 rear?

5 A To the rear absolutely.

6 Q While you were handcuffing him
7 where there any other Officers present?

8 A Not at that time, no.

9 Q Now so you handcuffed him by
10 yourself?

11 A Yes.

12 Q And can you show the jury how
13 you handcuffed him to the rear what position
14 his arms were in?

15 A I don't remember. I have no
16 recollection. When I take the cuff out one
17 goes long ways and I grab the hand and put a
18 cuff on it and the other one comes if I can
19 get it comes back around and whichever way
20 that falls to subdue the subject that is
21 cuffed.

22 Q Can you stand up and show us
23 what you are doing?

24 (The Officer then began to show
25 how he handcuffs a subject.)

1 A One arms comes around and the
2 cuffs are on the right those come out, they
3 go on and they go on. I have to retrieve
4 the other arm and that goes back around
5 whichever way the cuff goes on. I have no
6 idea which way those went on.

7 Q You don't -- so what you are
8 saying is that you the don't know if he was
9 cuffed in a parallel manner like I am
10 indicating right now with my hands?

11 A No I am not sure.

12 Q Or if he was cuffed with his
13 hands on top of on another?

14 A I can tell you he is not very
15 agile. This is a big man and trying to get
16 his hand behind him but at the time I was
17 just trying to cuff him.

18 Q So it could have been one hand
19 on top of the other?

20 A Could have went this way or
21 this way both ways, whichever way.

22 THE COURT: Just for the record
23 Mr. Giannini was showing and indicting
24 once again a position where his hands
25 were on top of the other and Officer

COUNT 3

1 Trotta could be any number of
2 combinations one on top of the other
3 reverse one on top of the other, side
4 by side or even the palms facing each
5 other, is that correct?

6 A That is correct.

7 THE COURT: Thank you.

8 Q The point is that it could have
9 been one on top of the other?

10 A It absolutely could have been.

11 Q You have handcuffed people that
12 way before?

13 A Numerous times.

14 Q Excuse me?

15 A Numerous times.

16 Q Now -- how long were you at the
17 scene with Mr. Cuthbert before the first
18 Officer other than you arrived, before
19 another Officer arrived?

20 A I would probably say eight, ten
21 minutes maybe.

22 Q Who was that?

23 A Officer Barry Johnson.

24 Q And when he arrived on the
25 scene Mr. Cuthbert was already handcuffed?

1 A He was.

2 Q And he was a -- well lets go
3 back. You said you put him over the hood of
4 your vehicle?

5 A Yes, trying to get him
6 handcuffed.

7 Q So just so make this clear you
8 grabbed him, I think you said on direct
9 examination you grabbed his right arm first?

10 A Left first.

11 Q And then you swung him onto the
12 hood of vehicle?

13 A Yes, sir. He came around and
14 right on the hood of the truck.

15 Q And then you grabbed his?

16 A Right arm and attempted to --

17 Q At all times he was on the hood
18 of your vehicle?

19 A Yes, sir. Flailing and
20 yelling.

21 Q How much do you weigh?

22 A I weigh a hundred and fifty two
23 pounds.

24 Q Would you agree that Mr.
25 Cuthbert is bigger than you?

on
hood

152

1 A Absolutely. That is the reason
2 I placed him on the hood of the pickup.

3 Q Then Officer Barry arrived?

4 A Yes.

5 Q And you were both outside of
6 the pickup truck?

7 A Yes.

8 Q And what was the first thing
9 Officer Barry does?

10 A He comes over and asks me
11 what's happening and I told him that this
12 gentleman, this guy wouldn't stop, he just
13 keeps yelling and screaming and he says,
14 "Great another cop." "Sir, calm down."

15 Q But he's cuffed now?

16 A He is cuffed and flailing on
17 the hood of the car in an irate manner.

18 Q Flailing his legs you mean?

19 A Failing with his body in an
20 irate manner.

21 Q He was moving up and down.

22 A Absolutely. Clearly irate.

23 Q Could it be that he was in
24 pain?

25 A He didn't say pain but he was

1 irate.

2 Q Could it be that he was in
3 pain?

4 A Yes.

5 Q From being handcuffed with his
6 hands --

7 A He never said anything --

8 THE COURT: Wait until he is
9 finished his question. Continue.

10 Q Could it be that he was in
11 pain?

12 A It could have been but he never
13 said anything about it.

14 Q He didn't tell you he was in
15 pain?

16 A No.

17 Q That it was hurting?

18 A No.

19 Q To loosen cuffs?

20 A No.

21 Q Never said anything like that?

22 A Not at that time, no.

23 Q Did he ever say that?

24 A Not that I can recall, no.

25 Q Now when Officer Barry arrived

↑
BS
↓

1 did you place Mr. Cuthbert in one of the
2 vehicles?

3 A We did. That was about fifteen
4 minutes after we had called for a transport
5 unit, a police car with a caged unit.

6 Q Are you saying you kept him
7 outdoors until an additional vehicle arrived
8 besides Officer Barry?

9 A Yes.

10 Q Didn't you say there was an
11 Officer Rantinella that also responded?

12 A Yes, sir.

13 Q How long were you at the scene
14 when Officer Rantinella responded?

15 A Within the ten minutes, shortly
16 after.

17 Q Do you have anything to
18 indicate how long you were at the scene that
19 day?

20 A Just the record -- just the
21 record would show.

22 Q What does it show, how long
23 were you there?

24 A It shows, I don't have the
25 exact time I arrived but it does have the

1 time that he was transported at 10:56.

2 Q Officer, Officer, I want to
3 know if you need something to refresh your
4 recollection of when you arrived and when
5 you actually put him in a vehicle for
6 transportation?

7 A Oh, that I have no idea. I
8 can't recall that.

9 Q Could it have been thirty
10 minutes?

11 A Absolutely.

12 Q Could it have been 40 minutes?

13 A I would say more thirty because
14 I arrived at 10:30 and he was taken away at
15 10:56 so almost a half an hour.

16 Q You said on direct examination
17 that when you brought him over to the
18 vehicle for transportation you had to drag
19 him over?

20 A Yes.

21 Q Did you drag him with someone
22 else?

23 A I did.

24 Q Who was that?

25 A It was Officer Johnson.

1 Q So again he was outside?

2 A Right.

3 Q And you dragged him over to
4 this vehicle?

5 A Right.

6 Q And you put him in face down?

7 A Right.

8 Q In the back of the vehicle?

9 A Yes.

10 Q And at also time he was cuffed?

11 A Yes.

12 Q To the rear?

13 A Yes.

14 Q Was he in pain?

15 A Not that I know of. He was
16 yelling.

17 Q He was yelling, he was in pain?

18 A That I can't recall. I don't
19 know about that.

20 Q When you say, "You can't
21 recall," are you saying that he might have
22 been saying I am in pain, loosen these
23 cuffs?

24 A No, at the time he was refusing
25 to walk and was caught under his arms and

1 dragged to the back of the car because he
2 was in custody. He was placed in the back
3 of the vehicle and then his legs were spread
4 wide open so he wouldn't enter. So they had
5 to be closed and had to be pushed in. At
6 that time I went around to the drivers side
7 passenger door and pulled him through.

8 Q There was, like you said, about
9 a half hour from the time you arrived until
10 you put him in the vehicle for
11 transportation?

12 A Right.

13 Q Did there come a time when you
14 had him sitting on the side of the road in
15 the snow?

16 A Yes, sir.

17 Q So he was actually sitting on
18 his ass in the snow?

19 A Yes, for his own safety.

20 Q Not in a police car?

21 A No. There was no other police
22 cars there. We all had SUV's.

23 Q And you say it was like bitter
24 cold?

25 A It was. He was offered a

1 jacket which he refused.

2 Q Did you ever turn him on his
3 face while he was sitting in the snow?

4 A No.

5 Q And you never put him face
6 down?

7 A Yes, he went chest down after
8 he was un compliant on the hood of the
9 truck. With safety for himself and safety
10 for the Officers if someone continues to
11 flail the next spot is from a standing
12 position down to the ground level. There is
13 no chance of him falling off the car or
14 hurting himself?

15 Q So there was a time that they
16 had him face down in the ice and snow?

17 A Yes.

18 Q Was Officer Barry present?

19 A He was.

20 Q All right. Did you ever see
21 Officer Barry get on top of him while he was
22 face down and put his knee in his back?

23 A No, I didn't see that no.

24 Q By the way, when was the last
25 time you discussed this case before you took

1 the stand with Officer Barry?

2 A We have talking about it's now
3 for the last couple of days.

4 Q You have been talking about
5 this case?

6 A Yes, sir. It was a concern?

7 Q So when was the last time?

8 A Today.

9 Q Where was that?

10 A Right in the back.

11 Q You mean of courthouse?

12 A Yes.

13 Q He is here?

14 A Yes.

15 Q What about Officer Rantinelli,
16 when was the last time you talked about the
17 case with him before you took the stand?

18 A I want to say Monday.

19 Q Where was that?

20 A Headquarters.

21 Q And police Officer Thomas
22 Strong, the last time you discussed the case
23 with him before you took the stand?

24 A He was also Monday.

25 Q Monday?

1 A Monday, the one that just
2 passed, yesterday.

3 Q Where?

4 A At headquarters.

5 Q When was the last time you
6 discussed the case with ADA MacDonnell
7 before you took the stand today?

8 A Today.

9 Q Before you took the stand?

10 A Yes.

11 Q Was Officer Johnson there?

12 A He was.

13 Q Officer Rantinella?

14 A No?

15 Q Officer Strong?

16 A No.

17 Q Now when you arrived at the
18 scene you were there to investigate an
19 accident, right?

20 A I was.

21 Q Did you take any photos?

22 A No.

23 Q Did you take a statement from
24 the driver of the of the other vehicle Luz
25 Torres?

1 A No.

2 Q Do you know if anyone ever
3 spoke to her from January 23, 2014 until
4 today?

5 A Not that I am aware of, no.
6 No.

7 Q So you are sure you didn't
8 speak to her?

9 A Yes.

10 Q And Officer Barry didn't speak
11 to her?

12 THE COURT: Just for the record
13 it's Officer Barry Johnson.

14 Q Barry Johnson. I am sorry.
15 Do you know that Officer Barry
16 Johnson did not take a statement from her,
17 right?

18 A I am not aware of that, no.

19 Q You haven't seen any statement?

20 A No.

21 Q It's the same thing with
22 Officer Thomas Strong, no statement?

23 A No.

24 Q Did there come a time that any
25 of the Officer's told the driver of the

1 other vehicle to leave the scene?

2 A Not that I am aware of.

3 Q Did she leave the scene?

4 A She must have after the

5 transport. I didn't stay in touch.

6 Q You said in direct examination
7 that you did training right?

8 A I did.

9 Q You get training to conduct
10 investigations on accident scenes?

11 A I do.

12 Q You did do an accident report?

13 A I did.

14 Q Did you come to a conclusion
15 who was a fault?

16 A I did.

17 Q And who was that?

18 A I am unaware, I put generally.
19 I don't come to a conclusion whether it was
20 someone's fault I just state what the
21 drivers had stated.

22 Q And was it clear based on your
23 investigation that Mr. Cuthbert was not at
24 fault?

25 A Yes.

1 Q The other driver was at fault?

2 A She slid --

3 Q Did you inspect her vehicle at
4 all?

5 A I did. I glanced at it when we
6 were parking the van.

7 Q Do you recall what she was
8 driving?

9 A I think it was a red vehicle.
10 I don't recall what kind of vehicle it was.

11 Q Do you recall if it was an old
12 vehicle or a new vehicle?

13 A I can't recall.

14 Q Can you recall if the tires --

15 THE COURT: Mr. Giannini, you must
16 let him finish his answers so you can
17 ask your next question.

18 Q Do you recall if he tires were
19 bald?

20 A I don't recall that, no.

21 Q Do you have of camera in your
22 car when you go out to do investigations?

23 A I don't. No, sir.

24 Q You have cameras at
25 headquarters?

1 A The Sargent vehicle has a
2 camera yes.

3 Q And you use them at times to
4 take photos of accident scenes and crime
5 scenes?

6 A Yes, at times.

7 Q But that day you didn't have
8 any?

9 A No, I was not in my regular
10 patrol vehicle.

11 Q What about video cameras? Do
12 you have video cameras at headquarters?

13 A We do have video cameras in the
14 cell area a headquarters.

15 Q Is there any video of the Mr.
16 Cuthbert in his cell?

17 A Not that I am aware of. I
18 don't know.

19 Q Withdrawn.
20 He is transported back to
21 headquarters, right?

22 A Right.

23 Q And did you go back to
24 headquarters?

25 A I did.

1 Q And were you there when he
2 arrived?

3 A I was.

4 Q You are the arresting Officer,
5 right?

6 A I am.

7 Q He was still cuffed?

8 A He was.

9 Q And what if anything did you do
10 with him when he first got to headquarters?

11 A What routine we have is to help
12 him tor exit the vehicle.

13 Q Was he put in a cell.

14 A I think he was put behind the
15 glass for processing at first.

16 Q When you last saw him was he
17 still handcuffed?

18 A Absolutely.

19 Q Do you know how long he
20 remained handcuffed at headquarters that
21 day?

22 A No, I don't.

23 Q Could it have been several
24 hours?

25 A It could have been but it's

1 unlikely.

2 Q Now, if you know, or isn't it
3 true that while he was at headquarters an
4 Officer took photographs of his wrists and
5 hands?

6 A I believe there were some.

7 Q What do you mean?

8 A I think the Sargent took those
9 but I am not sure.

10 Q This is your case right?

11 A Absolutely.

12 Q And you don't know whether or
13 not your Sargent took photos or not?

14 A The photos were never enclosed.
15 There are photos of him.

16 Q How do you know that?

17 A I saw them the other day.

18 Q You saw them when?

19 A The other day.

20 Q All right. I am going to hand
21 up to you -- I guess you can have this
22 marked as Defendants Exhibit C for
23 identification.

24 THE COURT: These are the photos
25 you showed us before Mr. Giannini.

ECD

1 MR. GIANNINI: No, no these are
2 other things.

3 (The above-referred to PHOTOS (6)
4 were marked as Defendant's Exhibits
5 C-H for identification, as of this
6 date.)

7 Q Officer Trotta, we just handed
8 to you -- you have seen these photos?

9 A I have.

10 Q And where was that?

11 A During the discussion with the
12 DA.

13 Q When was that?

14 A I want to say Monday,
15 yesterday, Monday.

16 Q But you knew back on January
17 23, 2014, that Sargent Claffin had taken
18 some photos?

19 A I didn't know until yesterday
20 that he took photos. I processed the
21 accident, the arrest and then I went home.
22 Whatever else that happened after that, that
23 was done by somebody else. Sargent Claffin.

24 Q But again, this was your case.

25 A Absolutely.

1 Q When was the last time you
2 talked to Sargent Claffin before you took
3 the stand today?

4 A About this case?

5 Q About this case?

6 A About this case i have not.

7 Q Now am I right for saying that
8 those photographs were taken on January 23,
9 2014?

10 A I would say yes, with the cover
11 sheet but there is no physical date on this
12 so.

13 Q The cover sheet says January
14 23, 2014?

15 A Yes.

16 Q And he cover sheet came with
17 the photos?

18 A Okay.

19 Q And do you know if that is a
20 fair and accurate representation of how his
21 wrist appeared on that date and that time?

22 A At that time when the photos
23 were taken? Like I said, I don't know I
24 wasn't there. I think it could have been
25 but I am unaware what they looked like after

1 the photos were taken and I don't know. He
2 was taken to a cell and I went to the other
3 room to process so --

4 Q Do you know if they are a fair
5 and accurate representation?

6 A No, I don't know no. Are there
7 red marks? Absolutely, sir.

8 THE COURT: You have an answer to
9 the question Mr. Giannini. You are
10 going to ask another.

11 MR. GIANNINI: Yes. May I have
12 thirty seconds Your Honor?

13 THE COURT: Sure.

14 (Whereupon, a short recess was
15 taken.)

16 Q If you know Officer Trotta, how
17 long did you have Mr. Cuthbert on his face
18 in the snow at the time how many minutes?

19 A I would say not even a minute.
20 He was subdued in not even a minute because
21 he was turned on his side and then sat down
22 on his rear end.

23 Q When you say, "He was subdued,"
24 he was taken off the hood of your car.

25 A Yes.

1 Q With the assistance of Officer
2 Johnson?

3 A Yes, sir.

4 Q Okay. Is it true that while
5 you were at the scene Mr. Cuthbert's
6 girlfriend responded to the scene, Jana
7 Bennett?

8 A Somebody came and I believe
9 that was her. He knew who she was.

10 Q An you describe her as she was
11 there?

12 A She was female.

13 Q Can you describe her any more
14 than that?

15 A Not at this time, no.

16 Q And did she come over to you?

17 A She did.

18 Q Did Officer Johnson warn her
19 away or tell her to stay back?

20 A Yes, absolutely.

21 Q Did she stay back?

22 A She did.

23 Q Did she take out her phone?

24 A She had a phone in her hands

25 yes, sir.

1 Q Did you see her pretending to
2 take some photograph?

3 A He just had the phone out I
4 don't know if she took any photographs, sir.

5 Q What are we up to? Would you
6 look at, after we have this marked as
7 Defendant's I for identification only?

8 (The above-referred to Photo was
9 marked as Defendant's Exhibit I for
10 identification, as of this date.)

11 THE COURT: We are ready when you
12 are Mr. Giannini.

13 Q Did you take a look at it?

14 A Yes, sir.

15 Q Can you tell us what it is?

16 A It's Officer Johnson standing
17 over Mr. Cuthbert.

18 Q Is that the date, time and
19 place that we are talking about?

20 A Yes.

21 Q And are you in that photograph?

22 A No.

23 Q Is Mr. Cuthbert on the ground?

24 A He is.

25 Q And was Officer Johnson

1 standing behind him?

2 A He is.

3 Q Does he have his knee in his
4 back?

5 A He has a his hands, his left
6 hand on his left shoulder and yes there is a
7 knee at his back.

8 Q Was he cuffed?

9 A He is.

10 Q To the rear?

11 A Yes.

12 Q If you know how long was he in
13 that seated position before you transported
14 him?

15 A That I don't recall. That I
16 don't know how long it was.

17 Q Can you describe with anymore
18 detail the truck that was at the
19 intersection parked behind my clients van?

20 A The delivery, the oil delivery.

21 Q What kind of truck was it, was
22 it an oil truck a cesspool truck?

23 A Yes, it was something big. It
24 was big. It was a big delivery truck.

25 Q Well do you know a person by

1 A It was.

2 Q It made a lot of noise?

3 A Yes, sir.

4 Q And you told him to stay around
5 because William Cuthbert was saying that you
6 hit him?

7 A Absolutely.

8 Q So you are saying now that
9 William Cuthbert did say that you hit him?

10 A He was to claiming that I hit
11 him with my truck.

12 Q All right. Back up.

13 A Okay.

14 Q He made that claim the first
15 time that you walked over to him?

16 A No he made that claim while he
17 was walking back to his vehicle to move it
18 out of the intersection.

19 Q All right. Hi made the claim,
20 lets get this straight. You are in your
21 vehicle?

22 A I am.

23 Q And he's in the street, right?

24 A Right.

25 Q And you were attempting to

1 drive your vehicle around him over to
2 Acabonac Road.

3 A Yes, I was getting him out of
4 the way.

5 Q And he claimed right then and
6 there that you hit him?

7 A He claimed it after he elbowed
8 the mirror. Yes.

9 Q Was he in the street when he
10 made that claim?

11 A He was.

12 Q And had he already parked his
13 van on Acabonac Way?

14 A After the incident with me?

15 Q I am not sure.

16 THE COURT: When have elbowed the
17 mirror he was still on Abrahams Path?

18 A He was. Yes, sir.

19 Q And when he made the claim that
20 you had hit him he was on Abrahams Path?

21 A Yes.

22 Q And you turned around and had a
23 conversation with the driver of in the
24 delivery truck saying this guy is claiming
25 that I hit him?

1 A Yes. Because Mr. Cuthbert
2 continued to walk away.

3 Q Are you done?

4 A I am.

5 Q So you knew before you pulled
6 over on Acabonac Road that he was claiming
7 that you hit him with your vehicle.

8 A Yes, I did. The accusation was
9 made.

10 Q But you just said on direct and
11 cross examination that he never made that
12 indication?

13 A No, he did. He elbowed the
14 mirror.

15 Q You just said over and over
16 again that he made the claim that you hit
17 him?

18 A He made it once. Once, that is
19 when he continued to walking to his vehicle
20 and that is when I turned to Mr. Brockwell
21 and said, don't go anywhere I need your
22 information and he said absolutely.

23 Q Now when he made the claim that
24 you hit him you were in your vehicle?

25 A I was.

1 Q The driving side?

2 A I was.

3 Q He was in the street?

4 A Um hum.

5 Q And the driver of his vehicle
6 was in his vehicle?

7 A Yes.

8 Q When you had these
9 conversations with the truck driver you were
10 speaking over the sound of the diesel
11 engine?

12 A Yes.

13 Q And did of take a statement
14 from him?

15 A I did not.

16 Q Did anybody take a statement
17 from him?

18 A No.

19 Q So it was clear then, that Mr.
20 Cuthbert thought that you hit him, right?

21 A Right.

22 Q Before he pulled over the
23 vehicle on Acabonac Way?

24 A Right.

25 Q And it clear that he complied

1 with your commands to pull the vehicle from
2 the stop sign over to Acabonac Way?

3 A Right.

4 Q You mentioned traffic on direct
5 examination you but is it true you only
6 recorded that one truck behind his vehicle
7 when you first got there?

8 A I recall the truck and the
9 numerous cars behind him before I proceeded
10 onto oncoming traffic, so there were a few.

11 Q Is that anywhere in your notes
12 that there were numerous vehicles in that
13 intersection?

14 A No, that I can recall no.

15 Q Now you did say on direct
16 examination that when you wanted to put him
17 in the have vehicle for transportation that
18 you had to drag him over?

19 A Yes.

20 Q And prior to your dragging him
21 he was sitting in the snow and ice for quite
22 a long time, maybe a half hour?

23 A I can't recall how long, but he
24 was sitting in the snow.

25 Q So isn't it true that when you

1 went to pick him up he couldn't move his
2 legs?

3 A I can't say that. No to that
4 maybe people can walk.

5 MR. MACDONNELL: Judge, I am going
6 to object. Calls for speculation as
7 far as --

8 THE COURT: I think the question
9 is did you know that the Defendant
10 couldn't move his legs.

11 A I did not know, no.

12 Q So when you picked him up with
13 Officer Johnson you didn't know whether or
14 not his legs were frozen?

15 A No, I did not know no.

16 Q All you knew was that he
17 couldn't walk?

18 A Right, all I knew what that he
19 wasn't walking.

20 Q So you didn't know why he
21 couldn't walk --

22 THE COURT: He said wouldn't walk.

23 A Right, I don't know why he
24 wouldn't walk. He was asked to stand. He
25 was escorted to the standing position and

1 then he was leaned forward and his toes were
2 being, his feet were dragged behind him.

3 Q Could it have been that his
4 legs were frozen and he couldn't walk at the
5 time you wanted to transport him?

6 MR. MACDONNELL: Objection.

7 THE COURT: Sustained. Calls for
8 speculation.

9 Q Judge -
10 Could it be that he couldn't
11 walk that day to transportation because his
12 both legs were frozen stiff?

13 MR. MACDONNELL: Objection.

14 THE COURT: Sustained. Calls for
15 speculation. He has already said he
16 didn't know why he would not walk.

17 Q Back up. So you don't know
18 whether he couldn't walk because he just
19 couldn't walk, you don't know.

20 A Meaning prior.

21 Q You don't know. When you
22 wanted to transport him you don't know why
23 he couldn't walk?

24 A I don't know.

25 Q And it could be that he just

1 couldn't at that point?

2 MR. MACDONNELL: Objection.

3 THE COURT: It's like asking if
4 it's possible which anything is
5 possible. The Officer had made it
6 clear, he does not know.

7 MR. GIANNINI: I know.

8 Q Now you testified on direct
9 examination that you put him the back of a
10 police car for transportation?

11 A Yes, sir.

12 Q And did you say that his feet
13 were sticking out of the car?

14 A Yes, sir.

15 Q And did you say on direct
16 examination that you took a strap and tied
17 it around his ankles and tied around his
18 arms?

19 A It was tied around his ankles
20 and clipped to the handcuffs, yes.

21 Q Do you call that being hog
22 tied?

23 A I would call that restraining.

24 Q Would a lay person call that
25 being hog tied?

1 A Maybe sir. Yes, sir.

2 Q Well you are laughing at that?

3 A Well I call it a leg restraint.

4 Q It's funny huh?

5 A Nothing is funny but, it's a
6 figure of speech?

7 MR. GIANNINI: I have no further
8 questions.

9 THE COURT: Very good. Any
10 redirect.

11 MR. MACDONNELL: Just briefly,
12 Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. MACDONNELL:

15 Q Officer, do you recall what
16 time you arrived at the scene or what time
17 the 911 call came across dispatch?

18 A I think it was around 10:26,
19 10:30.

20 Q And the time of arrests was
21 around what time?

22 A 10:56.

23 Q So in total thirty minutes
24 between when you were dispatched and when
25 the Defendant was placed in the vehicle for

1 arrest?

2 A Yes, sir.

3 Q And that includes the time for
4 you to drive from where you were to the
5 intersection where the accident occurred.

6 Had the interaction with the Defendant and
7 then the harassment, disorderly conduct and
8 resisting arrest come after that?

9 A Yes.

10 Q And you also stated earlier
11 that when you were driving in oncoming
12 traffic you saw the Defendant outside of the
13 vehicle having a conversation with Mr.
14 Brockway in the truck?

15 A Yes.

16 Q Do you recall what was being
17 said at that point?

18 A Not until I pulled up next to
19 him.

20 Q When you pulled up next to him
21 what did you hear the Defendant say?

22 A I presented myself as the
23 police, could you please move your car. "I
24 am waiting for the fucking cops." And that
25 is when he turned around. Then I said, just

1 move your truck so it doesn't get hit and he
2 turn around and said to the driver of the
3 truck, "Do you have a fucking problem too?"

4 MR. GIANNINI: Objection.

5 Withdrawn.

6 Q And he said that to the driver
7 of the other vehicle?

8 A The driver of the delivery
9 truck.

10 Q The window was down on that
11 truck?

12 A It was.

13 Q Now your also asked in cross
14 examination about the handcuffs with regard
15 to placing them behind the back of the
16 Defendant?

17 A Yes.

18 Q Why do you place the
19 Defendant's hands behind the back of the
20 Defendant?

21 A That is the routine for being
22 in charge, you put the handcuffs behind the
23 back. It's for safety of the Officer.

24 Q And you also stated on direct
25 the arrest regarding keeping the Defendant

1 outside of the vehicles and sitting on the
2 curb. Why was the Defendant not placed in
3 any of the vehicles that were at the scene?

4 A There was no room in any of the
5 vehicles that were at the scene and I don't
6 place people who are under arrest in the
7 drivers seat of any car.

8 MR. MACDONNELL: Thank you, Your
9 Honor. No further questions at this
10 time.

11 THE COURT: Recross examination.

12 RECROSS EXAMINATION

13 BY MR. GIANNINI:

14 Q You just said in your redirect
15 examination that there was no room in your
16 vehicle for him?

17 A Right, there was no room.

18 Q What about Officer Johnson's
19 vehicle?

20 A He was also in a SUV four-wheel
21 drive vehicle.

22 Q What about Officer Rantinelli?

23 A We were all in SUV's at that
24 time. We were told by the Sargent to occupy
25 an SUV. The roadways might have been

1 cleared but the driveways and side streets
2 were still full of snow?

3 Q If you know, how long did it
4 take from the time you placed him under
5 arrest until transportation arrived?

6 A I don't know how long I was
7 there it felt like a couple of minutes.

8 Q And what was the name of the
9 Officer that actually transported him to
10 headquarters?

11 A Officer Thomas Strong.

12 Q And just before you were about
13 to arrest him did you ever say to him, you
14 have a bad attitude?

15 MR. MACDONNELL: Objection, Your
16 Honor.

17 THE COURT: Sustained. It's not
18 part of the direct or cross
19 examination, or redirect.

20 MR. GIANNINI: I have no further
21 questions.

22 THE COURT: Yes. Very good.
23 Anything else.

24 MR. MACDONNELL: Nothing further.

25 THE COURT: Officer Trotta, you

1 are excused.

2 THE WITNESS: Thank you, sir.

3 THE COURT: Thank you. We will
4 take a ten minute break. See you back
5 at 2:20 p.m., with another witness.

6

7 (Whereupon, a recess was taken.)

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11 The foregoing minutes are hereby certified to be a true
12 and accurate transcript of the proceedings herein.

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Gloria E. Rosante, Court Reporter

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